

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 172 OF 2014

Raosaheb Patvardhan Nagari Sahakari ... **Petitioner**
Pat Sanstha Ltd., Ahmednagar.
Through its Sonai Branch Manager
Goraksha Murlidhar Dahitule

VERSUS

Pramod Dattatray Kand ... **Respondent.**
Age Major, Occupation: Business,
R/o 11/111, Revavikar Nagar,
Savedi, Ahmednagar, Taluka and
District Ahmednagar.

Mr. Rahul R. Karpe, Advocate for the petitioner
Mr. S. A. Ambad, APP for the State.
Mr. A. C. Darandale, Advocate for the respondent

CORAM : T. V. NALAWADE &

DATE : 6th July, 2015

JUDGMENT:

1. Rule. Rule made returnable forthwith. By consent, heard both sides for final disposal.
2. The present petition is filed to challenge the judgment and order of Criminal Revision No.155/2012 which was pending before the learned Additional Sessions Judge, Ahmednagar. The revision was filed by the present respondent accused against the order of 'issue process' passed on 27.10.2010 in STC No. 438/2005 filed under section 138 of the Negotiable Instruments Act. In revision the order

of issue process is set aside and the Sessions Court has dismissed the complaint itself.

3. The complaint was filed in respect of dishonor of cheque of Rs.18 lac by the petitioner, a Cooperative Cooperative Credit Society. On the basis of record available, the JMFC had issued process for aforesaid offence. After appearance, the accused filed application at Exh.13 and prayed for giving directions to the complainant to pay necessary Court fees, of Rs.36,000/- in view of the provisions of Court Fees Act.

After hearing the parties, learned JMFC made order on 07.04.2012 and directed the complainant to pay deficit court fees, of Rs.33,000/-. Court fees of Rs. 3,000/- was already paid by the complainant. The complainant filed application for extension of time to make payment of deficit court fees on 23.4.2012. Say of the accused was called on the said application by learned JMFC. An application for dismissal of the complainant was moved by accused on 23.05.2012 and say of the complainant was called on the said application. On 23.05.2012, the complainant showed readiness to deposit deficit court fees. The learned JMFC asked the office to verify correctness of deficit fee as per order made on Exh. 13 and on the basis of report submitted by the office, deficit court fee came to

be deposited by the complainant on 23.5.2012 and it was accepted by the Court.

4. The order dated 23.5.2012 was not challenged in the revision by the accused and prior to the passing of such order, he filed revision on 04.05.2012 to challenge the order of issuance of process itself. Learned Additional Sessions Judge has held that in view of provisions under Section 204(4) of Cr. P.C. the learned JMFC ought not to have issued process and set aside the order of 'issue process' and further, dismissed the complaint.

5. The submissions made show that in the past, court fees of Rs.3000/- was payable on the aforesaid cheque amount and after amendment effected to the Bombay Court Fees Act, prior to the date of filing of the complaint, it become necessary to pay Court fees of Rs.36,000/-. In view of the provisions of Section 5 of the Bombay Court fee Act, it was necessary for the Court to verify that correct court fee is paid in the matter. Without verifying the correctness regarding payment of Court fee, the order of issue process came to be made.

6. The provisions of section 204(4) Cr. P. C. reads as under:

“Section 204(4): When by any law for the time being in force any process-fees or other fees are payable, no process shall be

issued until the fees are paid, and, if such, fees are not paid within a reasonable time, the Magistrate may dismiss the Complaint.”

This provision shows that there is discretionary power with the criminal Court to grant time for making payment of court fee. It needs to be kept in mind that taking cognizance of offence is different than issuing process under section 204 Cr.P.C. Thus, the law does not prevent entertaining such matter, filing of the complaint with deficit court fee and the aforesaid provision shows that the court can give time to complainant, though it should be reasonable, to pay deficit court fees.

7. It can be said that the aforesaid mistake came to the notice only when the application was moved at Exh. 13 by the accused on 27.02.2012. Order was made on the said application on 07.04.2012 and deficit court fees came to be paid on 23.5.2012. Learned JMFC accepted the deficit court fee. Thus, technically, the court corrected its own error and directed the complainant to pay the deficit court fee. Though in section 204(4) Cr.P.C. it is mentioned that the complaint can be dismissed, this provision does not show that taking cognizance of the offence and making of the order of issue process itself can be treated as illegal. Provision of section 460(f) Cr.P.C. also needs to be kept in mind. Such irregularity does not vitiate the proceedings. Thus the Magistrate exercised the discretion and

extended the time and then accepted the deficit court fees.

In view of this circumstance, it was necessary for the accused to challenge the order, by which the Magistrate had granted extension of time, and on this ground, the order of issue process could not have been challenged. In any case, it being discretion, the revisional court is not excepted to lightly interfere in such order. Thus the learned Additional Session Judge has committed error in making order of setting aside the order of “issue process” and also the order of dismissal of complaint.

8. In the result, criminal writ petition is allowed. The judgment and order made made by the Sessions Judge is set aside. Complaint is restored to its original No. Order of issue process is also restored.

9. Parties to appear before the learned JMFC on 03.08.2015.

10. Rule is made absolute in the aforesaid terms.

(T. V. NALAWADE, J.)

JPC